

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

\_\_\_\_\_  
DASSAULT SYSTEMES, S.E. and  
DASSAULT SYSTEMES SOLIDWORKS  
CORPORATION,

Plaintiff,

Case No.: 1:18-cv-09608-LGS

v.

**ANSWER WITH AFFIRMATIVE  
DEFENSES**

SELDAT DISTRIBUTION, INC.,

Defendant.

DEMAND FOR JURY TRIAL

\_\_\_\_\_  
Seldat Distribution, Inc. ("Seldat" or "Defendant"), by and through its undersigned counsel answers Plaintiffs Dassault Systemes, S.E and Dassault Systemes Solidworks Corporation ("Plaintiffs") corrected complaint dated and filed October 25, 2018 ("Complaint") as follows:

**AS TO THE ALLEGED NATURE OF THE ACTION**

1. The allegations in this paragraph of the Complaint purport to describe the nature of the Complaint, to which no response is required. To the extent that a response may be deemed necessary, Defendant denies the allegations set forth in this paragraph of the Complaint.

**AS TO THE ALLEGED PARTIES**

2. Denied. Defendant lacks knowledge or information sufficient to form as belief as to the truth of the allegations in this paragraph and therefore denies them.

3. Denied. Defendant lacks knowledge or information sufficient to form as belief as to the truth of the allegations in this paragraph and therefore denies them.

4. Denied.

**AS TO THE ALLEGED BASIS FOR JURISDICTION AND VENUE**

5. Denied. The allegations in this paragraph constitute conclusion of law as to which no response is required and Defendant therefore denies them.

6. Admitted in part and denied in part. Defendant admits that this court has subject matter jurisdiction pursuant to 28 U.S.C. 1331 and 1338(a). Defendant denies that this court has subject matter jurisdiction pursuant to 28 U.S.C. 1332(a).

7. Denied. Defendant denies that this court has personal jurisdiction over Defendant. The allegations in this paragraph constitute conclusion of law as to which no response is required and Defendant therefore denies them. To the extent a response is required, Defendant is a New Jersey entity.

8. Denied. Defendant denies that venue is proper in the Southern District of New York.

**AS TO THE ALLEGED BACKGROUND**

**Dassault and Copyrighted Work**

9. Denied. Defendant lacks knowledge or information sufficient to form as belief as to the truth of the allegations in this paragraph and therefore denies them.

10. Denied. Defendant lacks knowledge or information sufficient to form as belief as to the truth of the allegations in this paragraph and therefore denies them.

**The CATIA V5 Software Package**

11. Denied. Defendant lacks knowledge or information sufficient to form as belief as to the truth of the allegations in this paragraph and therefore denies them.

12. Denied. Defendant lacks knowledge or information sufficient to form as belief as to the truth of the allegations in this paragraph and therefore denies them.

13. Denied. Defendant lacks knowledge or information sufficient to form as belief as to the truth of the allegations in this paragraph and therefore denies them.

14. Denied. Defendant lacks knowledge or information sufficient to form as belief as to the truth of the allegations in this paragraph and therefore denies them.

**The Solidworks Software Package**

15. Denied. Defendant lacks knowledge or information sufficient to form as belief as to the truth of the allegations in this paragraph and therefore denies them.

16. Denied. Defendant lacks knowledge or information sufficient to form as belief as to the truth of the allegations in this paragraph and therefore denies them.

17. Denied. Defendant lacks knowledge or information sufficient to form as belief as to the truth of the allegations in this paragraph and therefore denies them.

**Seldat's Infringement**

18. Denied.

19. Admitted in part and denied in part. Defendant admits that it downloaded Dassault's CATIA V5 software package. Defendant denies that it executed and used Dassault's CATIA V5 software package as that term is used in the Complaint. Defendant denies all remaining allegations in this paragraph.

20. Denied.

21. Denied in part and admit in part.

22. Denied in part and admit in part.

23. Denied.

24. Denied

25. Denied. Defendant lacks knowledge or information sufficient to form as belief as



to the truth of the allegations in this paragraph and therefore denies them.

**AS TO THE ALLEGED FIRST COUNT**

26. Defendant incorporates its responses to paragraph 1 through 25 as though fully set forth herein.

27. Denied. Defendant lacks knowledge or information sufficient to form as belief as to the truth of the allegations in this paragraph and therefore denies them

28. Denied. Defendant lacks knowledge or information sufficient to form as belief as to the truth of the allegations in this paragraph and therefore denies them.

29. Denied. Defendant lacks knowledge or information sufficient to form as belief as to the truth of the allegations in this paragraph and therefore denies them.

30. Denied.

31. Denied.

32. Denied.

33. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required and Defendant therefore denies them.

34. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required and Defendant therefore denies them.

35. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required and Defendant therefore denies them.

**AS TO THE ALLEGED SECOND COUNT**

36. Defendant incorporates its responses to paragraph 1 through 35 as though fully set

forth herein.

36. Denied. Defendant lacks knowledge or information sufficient to form as belief as to the truth of the allegations in this paragraph and therefore denies them

37. Denied. Defendant lacks knowledge or information sufficient to form as belief as to the truth of the allegations in this paragraph and therefore denies them.

38. Denied.

39. Denied.

40. Denied.

41. Denied.

42. Denied.

43. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required and Defendant therefore denies them.

44. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required and Defendant therefore denies them.

45. Denied. The allegations in this paragraph constitute conclusions of law to which no response is required and Defendant therefore denies them.

Defendant further denies and objects to each and every one of Plaintiff's "prayers for relief" lettered "A – F", inclusive.

**WHEREFORE**, Defendant respectfully requests judgment in its favor dismissing the Complaint with prejudice, together with all costs and fees, including an award of attorneys' fees, as determined by the Court.

**AFFIRMATIVE DEFENSES**

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

Plaintiff has failed to state a claim upon which relief may be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by subject matter jurisdiction.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

Plaintiff lacks a valid copyright registration.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

Plaintiff lacks standing to recover damages or attorney's fees for the alleged copyright infringement.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

Plaintiff's asserted copyright registration for the work is invalid, and/or unenforceable for one or more of the following reasons: (a) Plaintiff is not the author of the work; (b) Plaintiff did not create the work; (c) The asserted original work represented in the alleged registration is not copyrightable; (d) Plaintiff is not the owner of the work; (e) The asserted work lacks requisite originality; (f) Plaintiff did not properly register copyrights in the work.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

Plaintiff's claim for copyright infringement fails since Defendant did not copy the work.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff is not entitled to recover statutory damages under 17 U.S.C. 504 because Plaintiff failed to meet the statutory requirements.

**AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE**



Plaintiff is not entitled to recover fees and costs under 17 U.S.C. 504 because Plaintiff failed to meet the statutory requirements.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

Plaintiff is not entitled to recover damages for any infringement of the asserted copyright because Plaintiff failed to meet the copyright notice requirements of the Copyright Act, including Chapter 4 of the Act.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

Any alleged infringement of the subject work was innocent, passive, not willful and without notice of any alleged claim of copyright.

**AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiff suffered no damages.

**AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE**

If Plaintiff provided actual notice of its copyright registration to Defendant, any infringement, if determined, and any damages, would accrue only after actual notice.

**AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE**

With knowledge of Defendant's alleged use of the asserted copyrighted work, Plaintiff delayed in placing Defendant on notice of the alleged infringement and as a result, Defendant acted without notice of Plaintiff's alleged rights, to Defendant's prejudice.

**AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE**

The doctrine of implied license.

**AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE**

The doctrine of laches.

**AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE**

The doctrine of unclean hands.

**AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE**

At all times, Defendant acted in a commercially reasonable and lawful manner.

**AS AND FOR A EIGHTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claim of copyright infringement is barred by the doctrines of merger or scenes a faire.

**AS AND FOR A NINETEENTH AFFIRMATIVE DEFENSE**

Plaintiff has suffered no harm or irreparable harm.

**AS AND FOR A TWENTIETH AFFIRMATIVE DEFENSE**

Plaintiff is not entitled to any statutory damages.

**AS AND FOR A TWENTY-FIRST AFFIRMATIVE DEFENSE**

Plaintiffs' claims for relief are barred by the "Fair Use Doctrine" pursuant to Section 107 of the Copyright Act, 17 U.S.C. §107.



**AS AND FOR A TWENTY-SECOND AFFIRMATIVE DEFENSE**

The alleged infringement did not occur in the US.

Dated: New York, New York  
November 19, 2018

Respectfully submitted,

**Seldat Distribution, Inc.**

/s/Loudie V. Srebnick

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